

DOCKET FILE COPY  
ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 94M-282

In re Applications **APR 21 4 30 PM '94**

MM Docket No. 94-10 ✓

41613

The Lutheran Church/  
Missouri Synod

File Nos. BR- 890929VC  
BRH-890929VB

For Renewal of Licenses of  
Stations KFUE/KFUE-FM  
Clayton, Missouri

MEMORANDUM OPINION AND ORDER

Issued: April 19, 1994

; Released: April 21, 1994

1. Under consideration are: (a) a Motion to Compel Production of Documents, filed on April 7, 1994, by the Missouri State Conference of Branches of the NAACP, the St. Louis Branch of the NAACP and the St. Louis County Branch of the NAACP ("NAACP"); (b) a Partial Opposition thereto, filed on April 14, 1994, by The Lutheran Church-Missouri Synod ("KFUE"); (c) a Motion to Compel Answers to Interrogatories, filed on April 7, 1994, by the NAACP; and (d) an Opposition thereto, filed on April 14, 1994, by KFUE.<sup>1</sup>

Motion to Compel Production of Documents

2. On March 16, 1994, the NAACP requested KFUE to produce 37 categories of documents. On March 30, 1994, KFUE objected, in whole or part, to the production of all but two categories of documents, and to portions of the NAACP's instructions. The NAACP's motion, seeking to compel the production of 22 categories of documents, followed. For the reasons stated below, KFUE will be compelled to produce additional documents.

3. Objections to Instructions. KFUE objects to the instructions as confusing and burdensome. The objection will be sustained in part. First, no useful purpose would be served by producing "exact copies of all copies," and the documents need not be produced. However, if a copy of a document has different markings or handwritten notes, it is not an exact copy and should be produced. Second, the identity of the individuals who were requested to provide documents and the identity of those who responded should be disclosed, but the information that each individual provided would be unduly burdensome and need not be provided. Third, the identity of each individual who reviewed KFUE's response or any drafts is irrelevant and need not be provided. Fourth, KFUE's objection to the request that it provide, for each document, the date, author, other persons contributing to its creation, custodian, persons to whom it was distributed, and persons known to have seen the document, is sustained for the reasons stated in paragraph 3 of KFUE's April 14, 1994, Partial Opposition. Fifth, with respect to documents "formerly in existence," KFUE should fully describe the document, provide the information requested in Item "k" of the Mass

<sup>1</sup> The NAACP's motions to compel were late filed. However, good cause for such filing has been shown and the motions will be accepted nunc pro tunc.

Media Bureau's Definitions and Instructions, and identify who handled the document. Finally, KFUD's objection to the "time period covered" is overruled for the reasons stated at page 3 of the NAACP's Motion to Compel Production.<sup>2</sup>

4. Request 5. KFUD's objection to the production of tax and unemployment benefits records is sustained. The information sought appears to be available through other documents being produced by KFUD.

5. Request 6. KFUD's partial objection is sustained to the extent that it need not produce documents that are within the custody of other entities. In any event, KFUD states that it has produced all documents relevant to this request.

6. Request 12. KFUD's objection is sustained. The documents sought do not appear reasonably calculated to lead to the discovery of admissible evidence. See Section 1.311(b) of the Commission's Rules.

7. Requests 14 and 28. In its Motion to Compel Production, the NAACP has reformed these requests to meet the substance of KFUD's objections, and KFUD states that it has produced all relevant documents related to these requests. No ruling on these requests is, therefore, required.

8. Request 16. KFUD's objection is overruled. The documents sought appear reasonably calculated to lead to the discovery of admissible evidence and should be produced. To the extent that proprietary and confidential information is contained in these documents, counsel should reach an agreement which would protect such information from disclosure.

9. Request 17. KFUD's objection is sustained for the reason stated in paragraph 6, supra. In any event, KFUD has produced payroll records which, presumably, contain most of the information requested.

10. Requests 18, 21 and 33. KFUD's objections are overruled. The documents sought appear reasonably calculated to lead to the discovery of admissible evidence. In any event, KFUD states that it has produced such documents.

11. Requests 22, 23 and 25. KFUD's objections are overruled. The documents sought appear reasonably calculated to lead to the discovery of admissible evidence and should be produced to the extent that they are in the possession, custody or control of the licensee. However, KFUD has no obligation to obtain from Concordia Seminary additional documents which would satisfy the NAACP's request.

12. Request 26. KFUD's objection is sustained for the reason stated in paragraph 6, supra.

13. Requests 29 and 30. KFUD's objections are sustained for the reasons stated at pages 6-7 of KFUD's April 14, 1994, Partial Opposition.

---

<sup>2</sup> This ruling as to the time period covered is applicable to Requests 14, 18, 20-22, 26-30, 34, 36, and 37.

14. Requests 31 and 32. KFUE's objections are overruled. The documents sought appear reasonably calculated to lead to the discovery of admissible evidence and should be produced.

15. Requests 34, 35 and 36. KFUE's objections are sustained. KFUE states that it has never generated such documents (Requests 34 and 36), and that it did not keep such records on computer disks or tapes (Request 35). KFUE cannot produce documents and things which do not exist.

16. Request 37.<sup>3</sup> KFUE's objection is sustained for the reason stated in paragraph 6, supra.

#### Motion to Compel Answers to Interrogatories

17. On March 16, 1994, the NAACP propounded 24 interrogatories, most containing multiple subparts, to KFUE. On March 30, 1994, KFUE filed its answers and objections to the NAACP's interrogatories, objecting in whole or part to 11 interrogatories and to portions of the NAACP's instructions. The NAACP's motion, seeking to compel answers to 10 interrogatories, followed. For the reasons stated below, KFUE will be compelled to provide additional answers.<sup>4</sup>

18. Objections to Instructions. KFUE objects to certain of the instructions as burdensome, and to the time period covered by the interrogatories. These objections will be sustained in part. First, KFUE's objection to the time period covered is overruled for the reasons stated at page 4 of the NAACP's Motion to Compel Answers.<sup>5</sup> Second, the identity of the individuals who were requested to provide information and the identity of those who responded need not be disclosed, but each answer should identify the individual(s) primarily responsible for providing the information contained in that answer. In this regard, such identification should include the individual's name and current or last known address and telephone number. Third, the identity of each individual who reviewed the response or any drafts is irrelevant and need not be provided. Fourth, no certification that a "diligent search" or "diligent inquiry" need be made, but individuals may be asked at their depositions about the efforts made to provide complete, accurate and truthful answers to the interrogatories. Fifth, with respect to "persons having knowledge of the answers [who] are no longer available," KFUE will be required to provide those individuals' names and current or last known addresses and telephone numbers.

---

<sup>3</sup> The NAACP's Motion to Compel Production, at page 8, refers to "Request 36." (Underlining in original.) This appears to be a typographical error inasmuch as this paragraph of the motion clearly relates to Request 37.

<sup>4</sup> Portions of KFUE's Answers and Objections and the NAACP's Motion to Compel Answers contain personal attacks on opposing counsel's good faith, legal abilities, trial tactics, and motives. Such attacks have absolutely no bearing on the questions to be resolved, and do not advance either party's cause. They are unprofessional, improper, and should be discontinued. Cf. City of New York Municipal Broadcasting System, 39 RR 2d 102 (1976).

<sup>5</sup> This ruling as to the time period covered is applicable to Interrogatories 2, 4-8, 12, and 14.

Finally, with respect to documents which are no longer in existence or in KFUE's possession, KFUE should follow the ruling contained in paragraph 3, supra.

19. Interrogatories 4-6 and 8. KFUE's objection will be sustained in part. KFUE should identify the individual(s) with knowledge of the answers to these interrogatories. The NAACP may depose these individual(s) if further information is needed.

20. Interrogatories 7, 9 and 11. KFUE's objection is overruled. The information sought appears reasonably calculated to lead to the discovery of admissible evidence. With respect to Interrogatory 7, to the extent that certain information is available in ownership reports, reference to those reports will be sufficient.

21. Interrogatory 14. KFUE's objection is sustained for the reasons stated in paragraph 13, supra.

22. Interrogatory 18. KFUE's objection is sustained in part. KFUE should provide the information requested for those positions where knowledge of classical music or a specific religious background was expected. In any event, KFUE states that it has produced documents addressing this aspect of the interrogatory.

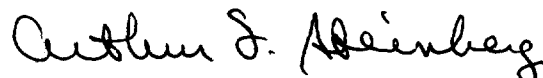
23. Interrogatory 23. KFUE's objection is sustained to the extent that it need not provide answers to subparts (e), (f) and (g) of this interrogatory. However, KFUE should provide the information requested in subparts (a), (b), (c) and (d) thereof. With respect to (d), a brief description shall suffice. The NAACP may depose these individual(s) if further information is needed.

Accordingly, IT IS ORDERED that the Motion to Compel Production of Documents and the Motion to Compel Answers to Interrogatories, both filed by the NAACP on April 7, 1994, ARE ACCEPTED nunc pro tunc.

IT IS FURTHER ORDERED that the Motion to Compel Production of Documents filed by the NAACP on April 7, 1994, IS GRANTED to the extent indicated above and IS DENIED in all other respects, and the documents requested SHALL BE PRODUCED by delivering copies thereof to the offices of counsel for the NAACP within ten (10) days of the release of this order, or at such other time and manner as may be mutually agreeable to counsel.

IT IS FURTHER ORDERED that the Motion to Compel Answers to Interrogatories filed by the NAACP on April 7, 1994, IS GRANTED to the extent indicated above and IS DENIED in all other respects, and answers to the interrogatories SHALL BE MADE within ten (10) days of the release of this order, or at such other time as may be mutually agreeable to counsel.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge